

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Copy (15)

JOHN RICHARD JAE,  
Plaintiff,

**JUDGE'S COPY**

No. 1: CV-00-0315

vs.

HARRISBURG

United States District Judge A.

KENNETH D. KYLER, et al.,  
Defendants.

SEP 7 2001 Magistrate Judge Smyser

MARY E. D'ANDREA, CLERK

Per 9/4  
DEPUTY CLERK

PLAINTIFFS APPEAL TO THE U.S. DISTRICT JUDGE FROM THE  
U.S. MAGISTRATE JUDGE'S AUGUST 14, 2001, ORDER DENYING THE  
PLAINTIFFS MOTION FOR ORDER OF COURT REQUIRING SCI-GREENE PRISON  
OFFICIALS TO RETURN TO THIS PLAINTIFF ALL HIS LEGAL MATERIALS COURT  
CASE FILES AND LAW BOOKS AND TO PROVIDE HIM WITH ENOUGH PAPER  
CARBON PAPER AND ENVELOPES TO ENABLE HIM TO MEET COURT DEADLINES  
INTER ALIA PETITION FOR WRIT OF HABEAS CORPUS AND BRIEF IN SUPPORT  
AND PLAINTIFFS MOTION FOR SANCTIONS ON DEFENDANTS & COUNSEL  
AND TO HOLD AFFRANT SHARON SEBEK IN CONTEMPT AND IMPOSE A FINE  
AND BRIEF IN SUPPORT

COMES NOW, the Plaintiff & Pro Se Counsel in the above-entitled case  
John Richard Jae, as a Layman unlettered in the Arts & Sciences of the Law  
& Legal Procedures within the United States pursuant to Fed. R. Civ. P. 2(a)  
this Court's M.D. LR 72.2, and now files his Plaintiff's Appeal to the  
U.S. District Judge from the U.S. Magistrate Judge's August 14, 2001, Order  
denying Plaintiff's Motion For Order of Court Requiring SCI-GREENE PRISON OFFICIALS  
TO RETURN TO THIS PLAINTIFF ALL HIS LEGAL MATERIALS, COURT CASE FILES AND LAW  
BOOKS AND TO PROVIDE HIM WITH ENOUGH PAPER, CARBON PAPER AND ENVELOPES TO  
ENABLE HIM TO MEET COURT DEADLINES, INTER ALIA PETITION FOR WRIT OF HABEAS CORPUS  
BRIEF IN SUPPORT AND PLAINTIFF'S MOTION FOR SANCTIONS ON DEFENDANTS & COUNSEL  
AND TO HOLD AFFRANT SHARON SEBEK IN CONTEMPT AND IMPOSE A FINE AND BRIEF  
IN SUPPORT & who, avers, deposes & states:

### I. RELEVANT PROCEDURAL HISTORY

On or About June 4, 2001, Plaintiff John Richard Jae, filed his  
Motion For Order of Court Requiring SCI-GREENE PRISON OFFICIALS TO RETURN TO  
THIS PLAINTIFF ALL OF HIS LEGAL MATERIALS, COURT CASE FILES AND LAW BOOKS AND TO  
PROVIDE HIM WITH ENOUGH PAPER, CARBON PAPER AND ENVELOPES TO ENABLE HIM TO MEET  
COURT DEADLINES INTER ALIA PETITION FOR WRIT OF HABEAS CORPUS AND BRIEF IN SUPPORT HEREIN

On or About August 1, 2001, Plaintiff Jae Filed his Motion for Sanction on Defendants & Counsel And To Hold Affiant Sharon Sebel In Contempt Impose A Fine And Brief In Support, In this case.

In his Order of August 14, 2001, U.S. Magistrate Judge J. Andrew Smyser, this Court, denied [REDACTED] these above-referenced [REDACTED] Motions, herein this Court. Plaintiff Jae now appeals to the U.S. District Judge from the Magistrate Judge's August 14, 2001, Order, denying [REDACTED] such motions, hereto.

### II. PLAINTIFF'S APPEAL

Plaintiff Jae avers & submits that, in denying Plaintiff's Motion for Order of Court Requiring SCI-Greene Prison Officials To Return To Plaintiff His Legal Materials, Court Case Files And Law Books And To Provide Him With Enough Paper, Carbon Paper And Envelopes To Enable Him To Meet Court Deadlines Inter Alia, Retain For Writ of Mandamus And Brief In Support, the U.S. Magistrate Judge stated & held:

The plaintiff has not identified what property it is that he needs to utilize to prepare his brief in opposition to the defendants' motion for summary judgment. Moreover, although the petitioner asserts that prison officials are not following the policy on property exchanges, it is clear from the plaintiff's briefs and declaration that he had the opportunity to go through his property on May 23, 2001 and June 17, 2001. The plaintiff's assertion that he does not have enough paper, carbon paper and envelopes to litigate this action is belied by the numerous, unnecessarily lengthy documents that he has filed in this case. 1/

Plaintiff specifically objects to and appeals from the above-holding of the U.S. Magistrate Judge and avers & submits that, first of all, contrary to what the U.S. Magistrate Judge holds & states, the Plaintiff <sup>clearly</sup> did state in Motion/Retain what property it is that he needs to utilize to prepare his brief in opposition to the defendants' motion for summary judgment, in that he clearly stated that he needs all of his files & papers in this case to enable him to do so. 2/

Furthermore, Plaintiff Jae avers & submits that, in her orders of October 6, 2000, [REDACTED]

In Jae vs. Long et al, CIVIL No. 1:00-cv-007 and Jae vs. Lasker, CIVIL No. 1:00-cv-1610, U.S. District Judge Rambo, of this Court, held that prison officials have an interest in limiting the amount of property an

1/ See U.S. Magistrate Judge Smyser's order of August 14, 2001, at 7.  
2/ See Plaintiff's Motion for Order of Court Requiring SCI-Greene Prison Officials To Return To Plaintiff His Legal Materials, Court Case Files And Law Books And To Provide Him With Enough Paper, Carbon Paper And Envelopes To Meet Court Deadlines Inter Alia, Retain For Writ of Mandamus And Brief In Support at 2-3 & at 4.



inmate can keep in his cell; see Cruik-Havuck, 627 F.2d 710 (5th Cir. 1980) that plaintiff also has a right to access to the courts; see Baundick Smith, 4 U.S. 817 (1977) & that the only way for the court to resolve the matter was balance prison officials' interest in limiting an inmate's property against plaintiff's right of access to the courts and she went on to hold that defendants had to see to it that the plaintiff had access to his files & papers necessary to enable him to file his written objection to the U.S. Magistrate Judge's Report And Recommendation in such a

Herein this instant case the facts are the same as they were in Jae vs. Long, et al., Civil No. 1: CV-99-0071 and Jae vs. L, Civil No. 1: CV-99-1610, on this issue, as in all three cases prison officials had denied this plaintiff access to his court case files & papers, materials, which plaintiff needed to first have in order to enable him to prepare & file court pleadings in his pending civil actions before the court and given such, the U.S. Magistrate Judge, herein this case in not applying herein the same above-referenced balance test, which Judge Rambo applied therein her October 6, 2000, in Jae vs. Long, et al., Civil No. 1: CV-99-0071 and Jae vs. L, Civil No. 1: CV-99-1610, on this same issue, which is alone is enough to reveal U.S. Magistrate Judge's August 14, 2001, Order denying Plaintiff's Motion for Court Requiring SCI - Greene Prison Officials to Return to Plaintiff All His Legal Materials, Court Case Files And Law Books Provide Him With Enough Paper, Carbon Paper And Envelopes to Enable Him to Meet Court Deadlines, Inter Alia Petition For writ of Habeas Corpus And Brief. Second of all, Plaintiff Jae avers & submits that, just because he had the opportunity to go through his stored property on May 22, 1999, does not necessarily mean that he had sufficient enough time to locate his files & papers in this case which he needs to and enable him to prepare & file his brief in opposition to defendant's judgment motion, herein this case, and he now avers that he did sufficient enough time on either May 22, or on June 17, to find. Plaintiff states in his Reply Brief to Defendants' Brief in Opposition Plaintiff's Motion For Court Order Requiring Prison Officials to Return to Plaintiff all his legal materials, court case files and law books, that in her orders of October 6, 2000,

Legal materials And Provide Him With Writing Materials, at 2-3  
has seven (7) boxes of Property heretofore and he was "not" given  
sufficient enough time to and was unable to go through all seven  
of his boxes on May 22, 2001, and on June 17, 2001, and, as such,  
he was unable to locate his Papers & Case Files in this case.  
he needs first to enable him to prepare & file his brief in  
opposition to defendants' summary judgment motion in this case  
and third of all, Plaintiff Jue avers & submits that, just because  
has filed other pleadings in this case, and had enough paper, carbon  
paper and envelopes to do so, does not necessarily mean that he has  
enough paper, carbon paper and envelopes to prepare the pleading  
that he needs to prepare, file & serve in this case, in opposition  
to defendants' summary judgment motion heretofore, which he now  
submits that he does "not" have enough paper and carbon  
prepare all of such pleadings, for, as this plaintiff sets forth on  
pages 11-12 of his Reply To Defendants' Brief In Opposition To Plaintiff's  
Court Order Requiring Prison Officials To Return Plaintiff's Legal  
Materials And Provide Him With Writing Materials, he needs a total of 116 pages  
of paper and 8 carbons in order to enable him to prepare all of such  
and he needs two (2) large legal envelopes to mail such pleading  
to this Court and to counsel for the Defendants in this case.  
that unless he has all of such, he cannot prepare & file such pleading  
and, therefore, the U.S. Magistrate Judge's order of April 19, 2001,  
denying this Plaintiff's Motion For Order Of Court Requiring  
Prison Officials To Return To This Plaintiff All His Legitimate  
Case Files And Law Books And To Provide Him With Enough Paper, Carbon  
Envelopes To Enable Him To Meet Court Deadlines, Inter Alia Petition For Writ  
And Brief In Support, ~~is~~ defies common sense and is hereby  
U.S. Magistrate Judge, by such order, <sup>plainly</sup> ignores and violates  
controlling Federal Case Law Authorities, as cited by  
Plaintiff in his Motion/Petition, at 5-8 & also such order  
violates First and Fourteenth Amendments of the United States



and also violates Article I, § 8, 7/20 § 26 of the Pennsylvania State Constitution such order of the U.S. Magistrate Judge's of August 14, 2001, denying Plaintiff's Motion For Order of Court Requiring SCI-Greene Prison Officials To Return To The Plaintiff All Legal Materials, Court Case Files And Law Books And To Provide Him With Enough Paper, Carbon And Envelopes To Meet Court Deadlines, Inter Alia Petition To Writ of Mandamus And A Support, is contrary to the Controlling & Other Federal Case Authorities as the Plaintiff forth and cites in his Motion/Petition, at 5-8, and such order is also contrary to the Controlling Federal Law & given the above & foregoing, herein, the U.S. Magistrate Judge's Statement/Holding, that, "A writ of mandamus is not appropriate in this case and is not necessary to aid this court in the exercise of its jurisdiction," is incorrect, as a writ of mandamus is appropriate in this case and is necessary to aid this court in the exercise of its jurisdiction, given the above & foregoing, it should be clear that the U.S. Magistrate Judge abused his discretion & authority by issuing such illegal order, and therefore Court, by law, must grant this appeal and reverse and vacate the U.S. Magistrate Judge's Order of August 14, 2001, denying such Motion/Petition and must such Motion/Petition in full, herein this case.

Furthermore, the Plaintiff avers & submits that, by denying the Plaintiff's Motion For Sanctions On Defendants & Counsel And To Hold Affiant Sharon Sebek In Contempt And Impose A Fine, the Magistrate Judge, holds & states:

On August 6, 2001, the plaintiff file a motion for sanctions against the defendants and defense counsel and to hold affiant Sharon Sebek in contempt. The plaintiff asserts that certain statements in Sharon Sebek's declaration and in the defendants' brief in opposition to his motion for an order requiring SCI-Greene officials to return plaintiff's legal materials and to provide enough paper, carbon paper and envelopes to enable him to meet court deadlines are false. Although the plaintiff may dispute certain statements made by the defendants, there is no basis to impose sanctions or to hold anyone in contempt of court. Accordingly, the plaintiff's motion for sanctions against the defendants and defense counsel and to hold affiant Sharon Sebek in contempt will be denied. 5

Plaintiff specifically objects to & appeals from the above holding/statement.

Magistrate Judge and avers & submits that, the U.S. Magistrate  
"is" wrong, as there is much more at issue here than just Plaintiff's  
certain statements made by the defendants and/or Sharon Sebek, as by  
way documents which the Defendants submitted herein as attached to  
Brief In Opposition To Plaintiff's Motion For Court Order Requiring Prison  
To Return Plaintiff's Legal Materials And Provide Him With Writing Materials  
show clear and convincing proof that Defendants, Defense Counsel  
and Affiant Sharon Sebek "have" committed fraud and "have"  
deliberately and maliciously falsified evidence and "lied".  
Can herein this case, as do the Affidavits of this Plaintiff  
James Mundy, #DP-4152, as attached to Plaintiff's Reply To Defendants  
Brief In Opposition To Plaintiff's Motion For Court Order Requiring  
Prison Officials To Return Plaintiff's Legal Materials And To Provide  
With Writing Materials, herein this case, and, given such, there  
"is" a clear and convincing basis to hold the Defendants, Defense  
Counsel and Affiant Sharon Sebek in Contempt of Court and  
sanction and fine them all, herein, and thus, the U.S. Mag  
Judge erred in denying this Plaintiff's Motion For Sanction  
on Defendants & Counsel And To Hold Affiant Sharon Sebek  
And Impose A Fine and this Court, by law, "must" reverse  
Such Order and grant this appeal and Plaintiff's Motion to  
hold Defendants, Defense Counsel And Affiant Sharon Sebek  
Contempt of Court and Sanction and fine each  
as this Court sees fit, here in this case.

Based upon the above & foregoing facts, arguments and  
citations of authorities, herein this appeal, as well as to  
set forth in this Plaintiff's Motion For Order Of  
Requiring Set-Greene Prison Officials To Return



Finally, Plaintiff avers & submits that, in denying Plaintiff's Motion For An Order Requiring Defendant Dragovich And SCI-Greene Superintendent Carter Blaine To Permit This Plaintiff To Communicate With And Write To Inmate Norman Johns At SCI-Camp Hill RVU, U.S. Magistrate Judge Smyser, stated that

On August 6, 2001, the defendants filed a sur-reply brief. In their brief, the defendants indicate that they have security concerns about allowing the plaintiff and inmate Johnston to communicate, but that they are willing, on a one-time basis, to make arrangements so that the plaintiff's proposed declaration maybe delivered and presented to inmate Johnston for his consideration and signature. The Defendants state that if the plaintiff delivers the proposed declaration to the Administrative Assistant to the Superintendent at SCI-Greene, he will then forward it to the Superintendent at SCI-Camp Hill for his delivery to inmate Johnston, and that the process would then be reversed for the document to be returned to the plaintiff. Since the defendants have agreed to a procedure to have the proposed declaration delivered to Johnston and then returned to the plaintiff, there is no need for the court to enter an order ordering the defendants to allow the plaintiff to communicate with inmate Johnston. Accordingly, the plaintiff's Motion For An Order allowing him to communicate with inmate Norman Johnston will be denied.

Plaintiff specifically objects to & appeals from the order of the U.S. Magistrate Judge, because, first of all, the U.S. Magistrate did not give this plaintiff any chance to respond to his arguments against the above-referenced defendants' plea he would have done, as the U.S. Magistrate Judge entered his ruling denying such motion, only a few days after defendants filed their sur-reply, containing such proposal and considered such ex parte, violates the controlling federal law on ex parte communications and of all, when this plaintiff delivered the proposed declaration to the Administrative Assistant here at Greene & he forwarded it to at Camp Hill who delivered such to Johnston and then came back here, Johnston refused to sign such affidavit, which Plaintiff avers

How old "sign such an affidavit for this Plaintiff  
 therefore, this Plaintiff believes that either such affidavit  
 was, in reality, never presented to Johnston as claimed  
 Defendant put a monkey wrench into such & threatened  
 Johnston if he signed such, as Defendants know the  
 Affidavit from Johnston would not only support this Plaintiff's  
 allegations, but would also show that there are material facts in  
 dispute in this case and their Summary Judgment motion would  
 be denied, herein, and given such, it seems mighty sure  
 that they would propose a procedure which would only help to  
 occur and this Plaintiff that Defendants/Defense counsel  
 intended to have this Affidavit presented to Inmate John  
 and that they just said that they would do so to prevent  
 Court from granting the Plaintiff's motion here, and given  
 it was sent to the U.S. Magistrate Judge to deny Plaintiff's  
 Motion for an order requiring Defendant Dragovich and SC  
 Superintendent Cameron Blaine to permit this Plaintiff to com-  
 mune with and write to Inmate Norman Johnston at SCI Camp Hill.

Based upon the foregoing facts, arguments & citations of authority  
 herein this appeal, as well as those set forth therein this Plaintiff  
 for order of Court requiring SCI-Greene African American Affairs to return  
 Plaintiff all his legal materials, Court case files and law books  
 provide him with enough paper, carbon paper and envelopes  
 enable him to meet Court deadlines, Inter Alia Petition for  
 Mandamus and Briefs in support, Plaintiff's Reply to Defendant's  
 In Opposition to Plaintiff's Motion for Court Order requiring  
 to return Plaintiff's legal materials and to provide him with  
 materials, the affidavits of Plaintiff John Richardson or  
 Murray, #DP-4152, attached thereto such Reply, as Exhibit  
 Plaintiff's Motion for sanctions on Defendants and Defense  
 counsel and Plaintiff's Motion for contempt and imposition



Defendant Dragovich And SGT Greene Superintendent  
 Conner Blaine To Remit This Plaintiff To Communicate  
 With And Write To Inmate Norman Johnston At SCI  
 Hill And Brief In Support and Plaintiff's Brief In Reply  
 Defendant's Memorandum In Opposition To Plaintiff's Motion  
 Correspond With Another Inmate, as well as based upon the  
 Controlling and other Federal Case Law Authorities upon the  
 Federal & State Law and upon the other pleadings herein this  
 It should be clear to this Court that the U.S. Magistrate Judge  
 Order of August 14, 2001, as is now herein appealed, "is" con-  
 to law, "is" erroneous and defies common sense & that the U.S.  
 Magistrate Judge abuses his discretion & authority by issuing  
 such illegal order, and it should therefore likewise be clear to the  
 Court that, by law, it "must" vacate & reverse such order and grant  
 Plaintiff the relief which he requests therein such motions/plea  
 herein this case and that this is what this Plaintiff Prays the  
 Court will do herein.

"And Plaintiff Further Sayeth Naught."

AND HE SHALL EVER PRAY=  
 RESPECTFULLY SUBMITTED:

(S) John Richard Jue  
 MR. JOHN RICHARD JUE  
 #BX-3219  
 SGT-Greene/omu  
 175 PROGRESS DRIVE  
 WAYNESBURG, PA. 15370-2090  
 Plaintiff and PRSE Counsel

Dated: 28th AUGUST 2001: